The meeting was called to order at 3.15 p.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 of 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/L.47/Add.2 and L.73; A/CONF.183/C.1/WGAL/L.2/Add.1; A/CONF.183/C.1/WGE/L.14/Add.2; A/CONF.183/C.1/WGIC/L.11/Add.4 and Corr.1)

Preamble to the draft Statute (*continued*)

1. **Mr. SLADE** (Samoa), Coordinator for the Preamble, said that, as a result of further consultations, agreement had now been reached on a text for the Preamble, set out in document A/CONF.183/C.1/L.73.

2. **The CHAIRMAN** asked whether she could take it that the Committee of the Whole agreed to refer the text contained in document A/CONF.183/C.1/L.73 to the Drafting Committee.

3. *It was so decided.*

Article 20 (*continued*)

4. **Mr. SALAND** (Sweden), Chairman of the Working Group on Applicable Law, introducing the Group's second report (A/CONF.183/C.1/WGAL/L.2/Add.1), said that after intensive consultations on article 20, paragraph 3, it had been decided to propose the inclusion of a definition of the word "gender" in the article in which it appeared for the first time, namely the proposed article 5 *ter* on "Crimes against humanity". The proposed definition would become paragraph 3 of article 5 *ter*, and, whenever the word "gender" appeared subsequently in the Statute, it would be accompanied by a footnote referring to the definition in article 5 *ter* (see footnote 2 in document A/CONF.183/C.1/WGAL/L.2/Add.1).

5. The Group's consideration of article 20 was now concluded, and he suggested that it could be forwarded to the Drafting Committee.

6. **Mr. AL AWADI** (United Arab Emirates) thought that it would be preferable not to have footnotes, but to include the text in the body of the article concerned.

7. However, footnote 1 to article 20, paragraph 3, in document A/CONF.183/C.1/WGAL/L.2/Add.1 stated that some delegations had been of the view that the paragraph should end with the words "human rights"; in other words, consensus had not in fact been reached. Further discussion was needed before the text could be transmitted to the Drafting Committee.

8. **Mr. SALAND** (Sweden), Chairman of the Working Group on Applicable Law, said that it could be left to the Drafting Committee to decide whether the content of footnote 2 should be included in the article itself.

9. With regard to footnote 1, he hoped that, in view of the shortage of time, the text could be referred to the Drafting Committee: it would always be possible to come back to the matter at a later stage.

10. **Mr. CHUKRI** (Syrian Arab Republic) supported the views expressed by the representative of the United Arab Emirates.

11. **Mr. PIRAGOFF** (Canada) said that the text contained in the document was the product of lengthy discussions and represented a carefully-crafted compromise. All delegations had had an opportunity to state their positions, and he did not think anything would be gained by re-opening the debate.

12. **Ms. SHAHEN** (Libyan Arab Jamahiriya), **Mr. ASSHAIBANI** (Yemen) and **Mr. MADANI** (Saudi Arabia) associated themselves with the statement made by the representative of the United Arab Emirates.

13. **Ms. SHARRAF** (Costa Rica) said it had been her understanding that agreement had been reached on the wording of article 20, paragraph 3. If that was not the case, however, the best solution might be to delete all references to gender from the text of the Statute.

14. **Mr. SALAND** (Sweden), Chairman of the Working Group on Applicable Law, said that, if the proposed text was accepted, the footnote 2 wording could instead be included in the text of paragraph 3 of article 20, so that it would read "... grounds such as gender as defined in article 5 *ter* ...".

15. **The CHAIRMAN** said that, if she heard no objection, she would take it that the Committee of the Whole agreed that the report should be forwarded to the Drafting Committee, with the suggestion that a reference to the definition of gender might be incorporated in paragraph 3 of article 20 instead of appearing in a footnote.

16. *It was so decided.*

Part 9 of the draft Statute (*continued*)

17. **Mr. MOCHOCHOKO** (Lesotho), Chairman of the Working Group on International Cooperation and Judicial Assistance, introduced his Group's report in document A/CONF.183/C.1/WGIC/L.11/Add.4 and Corr.1.

18. **Mr. VERGNE SABOIA** (Brazil), said that he wished to refer to the proposed deletion of paragraph 3 (b) of article 87, concerning nationality, and to footnote 2 in document A/CONF.183/C.1/WGIC/L.11/Add.4 with the addition in document A/CONF.183/C.1/WGIC/L.11/Add.4/Corr.1. In view of the footnote, Brazil could agree that the report should be forwarded to the Drafting Committee, but reserved the right to revert to the question, particularly in the light of the decision taken on the issue of reservations.

19. **Mr. FADL** (Sudan), referring to article 37, paragraph 3 (b), and article 91, paragraph 4, said that the constitutions of a number of countries, including his own, prohibited the surrender of nationals. His delegation hoped that the Court, once established, would take that difficulty into account.

20. **Mr. AL AWADI** (United Arab Emirates) thought that the footnotes to article 87, paragraph 3 (b), and article 91, paragraph 4, should be included in the Statute, or their content incorporated in the articles themselves.

21. **Mr. NATHAN** (Israel) said that his delegation had accepted the deletion of paragraph 3 (b) of article 87 in a spirit of compromise. However, under Israel's domestic law the extradition of nationals under any extradition arrangement was prohibited. That point would have to be covered in any reservation to the Statute.

22. **Ms. SHAHEN** (Libyan Arab Jamahiriya) said she wished to record her delegation's reservation on the deletion of paragraph 3 (b) of article 87, in view of the fact that the prohibition of the surrender of nationals was one of the most important provisions in her country's legislation. She endorsed the statements made by the representatives of the United Arab Emirates and the Sudan.

23. **Mr. BOUGUETAIA** (Algeria) said that his country's Constitution and legislation prohibited the extradition of nationals. Algeria therefore wished to record its reservation on the deletion of paragraph 3 (b) of article 87, pending a final decision as to the issue of reservations in general.

24. **Mr. JOSIPOVIĆ** (Croatia) said that, as far as the surrender or extradition of persons was concerned, his delegation's view was that the requirements of the Statute should prevail over any national legislation or constitutional provisions. If the laws of a State were not in compliance with the Statute in that respect, the State could change its laws, as Croatia itself had done in order to meet the requirements of the International Tribunal for the Former Yugoslavia.

25. His delegation regretted that no provision had been made in Part 9 of the Statute empowering the Court to issue a binding order if a State party failed to comply with a request for cooperation.

26. **Ms. MEKHEMAR** (Egypt), **Mr. MADANI** (Saudi Arabia) and **Mr. AL-SA'AIDI** (Kuwait) supported the statement made by the representative of the United Arab Emirates.

27. **Mr. KROKHMAL** (Ukraine) associated his delegation with those speakers who had drawn attention to the importance of the footnote mentioning that some States reserved their position with respect to the deletion of paragraph 3 (b) of article 87.

28. **The CHAIRMAN** said that note had been taken of the reservations of delegations and of their desire to raise the matter at a later stage.

29. She took it that the Committee of the Whole agreed to refer the provisions contained in the report to the Drafting Committee.

30. *It was so decided.*

Part 10 of the draft Statute (*continued*)

31. **Ms. WARLOW** (United States of America), Chairman of the Working Group on Enforcement, introduced the Group's report in document A/CONF.183/C.1/WGE/L.14/Add.2 and said that the Group had now concluded its work.

32. **The CHAIRMAN** asked whether she could take it that the Committee of the Whole agreed to refer the proposed text for article 101 contained in the report to the Drafting Committee.

33. *It was so decided.*

Part 11 of the draft Statute (*continued*)

34. **Mr. RAMA RAO** (India), Coordinator for Parts 2, 11 and 12, introducing document A/CONF.183/C.1/L.47/Add.2, pointed out that paragraph 2 (f) of article 102 had been reformulated in the light of the decisions taken in relation to article 86.

35. **The CHAIRMAN** asked whether she could take it that the Committee of the Whole agreed to refer the text in document A/CONF.183/C.1/L.47/Add.2 to the Drafting Committee.

36. *It was so decided.*

The meeting rose at 4.10 p.m.